IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE TWENTY SEVENTH DAY OF DECEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE N.V. RAMANA

WRIT PETITION NO : 21345 of 2004

Between:

Arigela Subramanyeswara Rao, S/o.Satyanarayana Murthy,
R/o.Nadipoodi Village, Amalapuram Mandal, East Godavari District.

..... PETITIONER

AND

Gram Panchayat, Nadipoodi Village, Amalapuram Mandal,
East Godavari District by its Secretary.

.....RESPONDENT

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue writ of Mandamus, or any other appropriate writ, order, or direction, declaring the action of the respondent herein in asking the petitioner not to conduct the broiler hen business without permission of the concerned officers as illegal, arbitrary and for a consequential direction, directing the respondent not to conduct the broiler hen business in his coconut garden, Nadipoodi village, Amalapuram Mandal, East Godavari District.

For the Petitioner: MR.M.LAKSHMANA SARMA, Advocate

For the Respondent: MR. DANTU SRINIVAS, SC for Nadipoodi Gram Panchayat

The Court at the stage of admission made the following:

ORDER:

Heard the learned counsel for the petitioner and the learned Standing Counsel for the respondent-Gram Panchayat.

The case of the petitioner, briefly stated, is that he claims to have run broiler hen business in the renovated cattle shed erected in his coconut garden, which is 200 metres away from Kumarnagar village under respondent-Gram Panchayat. He states that the respondent issued notices dated 25-9-2004 and 07-11-2004 informing him to obtain permission/licence from the authorities concerned for starting poultry farm business and for making constructions therefor. He also states that inasmuch as cattle sheds require no licence and the Gram Panchayat did not notify that broiler hen business requires licence, there is no need to obtain any licence for the business in question from the authorities, and accordingly he issued reply notices dated 30-9-2004 and 09-11-2004. Assailing the impugned action of the respondent in asking him to obtain permission from the authorities to conduct the business, the petitioner filed this writ petition.

Disputing the averments made in the affidavit filed in support of the writ petition, the respondent filed counter. Reiterating the counter averments, the learned Standing Counsel for the respondent-Gram Panchayat submitted that the inhabitants of Kumarnagar of Nadipudi by their representation dated 23-09-2004, requested the respondent not to allow the petitioner to establish poultry farm, which is at a distance of 100 yards from their residential houses, since the same will pollute the environment and cause health hazards to them. Thereupon, a notice dated 25-09-2004 was issued to the petitioner to obtain necessary permission in this regard. The

petitioner by his reply dated 30-09-2004 requested to grant him permission to rear broiler hens by the side of his cattle shed. Thereupon, the Gram Panchayat by its resolution dated
03-10-2004 asked the opinions of the Medical and Health Officer, Primary Health Centre, Bandarulanka and Pollution Control Board, East Godavari Kakinada about the poultry farm in the area. A notice was issued to the petitioner on 28-10-2004 instructing him to stop establishing poultry farm till permission from Medical Officer is received, but the petitioner refused to receive the same. Since the petitioner has not taken permission/licence as contemplated under Sections 121 and 127 of the A.P. Panchayat Raj Act, 1994 (for short "the Act"), another notice dated 08-11-2004 was issued directing the petitioner to remove the construction for establishment of poultry farm and having received it, he replied with untenable allegations. He also submitted that the Medical and Health Officer inspected the area and found that the residential houses of Kumarnagar are below 30 to 100 metres from the poultry farm, and as per the Rules a poultry farm shall be constructed at least at a distance of one kilometre from the residential houses, and if it is within the said distance, no objection certificate should be obtained from the residents who are residing within the radius of one kilometer, and the District Medical and Health Officer, Kakinada in his letter dated 09-11-2004 informed that the petitioner cannot be allowed to establish poultry farm in the area, for it is injurious to the health of the public. Thereupon a final notice on
19-11-2004 was also issued directing the petitioner to remove the poultry farm, but the petitioner refused to receive the notice, and thereupon, the Gram Panchayat by its resolution dated 20-11-2004 resolved to remove the poultry farm of the petitioner, and thereafter the Gram panchayat received caveat petition filed by the petitioner on the file of Principal Junior Civil Judge, Amalapuram.

The learned counsel for the respondent-Gram Panchayat further submitted that the residents of Kumarnagar issued a telegram dated
05-11-2004 to the Gram Panchayat stating that the petitioner constructed big shed and put about 1000 chicks and proposed to construct another shed to put more chicks, and requested to remove the same. The petitioner also issued a notice dated 26-11-2004 stating that he has not established poultry farm and the chicks he is rearing, are less than 10,000 in number, no licence need be obtained. To the allegation of the petitioner that no notification was issued by the Gram Panchayat under Section 119 of the Act notifying that broiler hen business requires licence, the

learned counsel for the respondent submitted that a general notification was issued as per the provisions of Section 119 of the Act and though it is not specifically mentioned in it about the broiler hens business, any act or trade or business which is injurious to the health of general public, requires prior permission of the Gram Panchayat, for it is the duty of the Gram Panchayat to maintain hygienic conditions for public safety. He further submitted that by suppressing the facts, the petitioner obtained status quo orders and in violation of the status quo orders, he started construction of third shed. He states that the Gram Panchayat is proceeding as per Rules and the petitioner being an Ex-Sarpanch of the Gram Panchayat is willfully violating the Rules. Thus, he prays to dismiss the writ petition.

It is the contention of the respondent that the petitioner in the guise of renovating the cattle shed, is constructing a poultry farm, and as per the definition of the word “building” under Section 2(3) of the Act, building includes a house, out-house, shop, stable, latrine, shed (other than a cattle shed in an agricultural land), hut, wall and any other such structure whether of masonry, bricks, wood, mud, metal or other material whatsoever, and since the petitioner is constructing a shed for housing a poultry farm, he is bound to obtain permission from the Gram Panchayat as required under Section 121 of the Act, and this apart, even after making the said constructions, he cannot run a poultry farm, unless he obtains licences and permission from the Gram Panchayat as required under Section 127 of the Act, and other authorities. Since the petitioner himself has admitted that he had not obtained permission for construction of the shed and for running a poultry farm therein, no fault can be found with the action of the respondent in requiring the petitioner to obtain the required permission.

Further, the contention of the petitioner that no notification was issued by the Gram Panchayat under Section 119 of the Act notifying that broiler hen business requires licence, and therefore, there is no need to obtain licence for running boiler hen business within the limits of the Gram Panchat, cannot be accepted for the reason that a general notification is said to have been issued by the respondent-Gram Panchayat as per the provisions of Section 119 of the Act stating that any act or trade or business which is injurious to the health of general public, requires prior permission of the Gram Panchayat, which is a Body to safeguard the health of the public, and this apart, it is stated that the Medical and Health Officer certified that the poultry farm being run by the petitioner is injurious to the health of the public.

Be that as it may, considering the fact that already the petitioner has started constructing the shed for the purpose of broiler hen business without obtaining permission/licence from the respondent, it is appropriate to dispose of the writ petition with the following directions:

The petitioner is directed to file an application before the respondent-Gram Panchayat seeking permission for construction of building/shed, and on such filing, the respondent-Gram Panchayat shall consider the same and pass appropriate orders thereon in accordance with law, and if such permission is granted, after completion of the construction, the petitioner may file an application seeking licence/permission for running the broiler hen business in the said shed, and if any such application is filed, the respondent is at liberty to consider the same and pass appropriate orders thereon in accordance with law. Unless the petitioner obtains the permissions/licences as directed above, he shall not make any constructions nor carry on any business.

With the above directions, the writ petition is disposed of at the stage of admission.

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N.V. RAMANA, J

Date: 27-12-2004

Svv/Ksr

To

1 The Secretary, Gram Panchayat, Nadipoodi Village, Amalapuram Mandal, East Godavari District.

2 Two C.D.copies.